

SERIAL 09045 SS VERSATA SOFTWARE AND SERVICES

DATE OF LAST REVISION: March 26, 2010 CONTRACT END DATE: September 30, 2014

**CONTRACT PERIOD BEGINNING OCTOBER 01, 2009
ENDING SEPTEMBER 30, 2014**

TO: All Departments
FROM: Department of Materials Management
SUBJECT: Contract for **VERSATA SOFTWARE AND SERVICES**

Attached to this letter is a listing of vendors available to Maricopa County Agencies utilizing the County Attorney's Contract C-19-10-004-3-00. The using agency and other interested parties may access and electronic version of this contract from the Materials Management Web site at:
http://www.maricopa.gov/materials/Awarded_Contracts/search.asp.

Please note: Price Agreement Purchase Orders (PG documents) may be generated using the information from this list. Use NIGP CODE 2086701

All purchases of product(s) listed on the attached pages of this letter are to be obtained from the listed contractor(s).



SOLE SOURCE CONTRACT

SERIAL 09045-SS

This Contract is entered into this 16th day of September 2009 by and between Maricopa County (the "County"), a political subdivision of the State of Arizona, and Versata Inc., a Texas corporation ("Contractor") for the purchase of software Support and Enhancement Services (as defined herein) for two County offices: the Maricopa County Sheriff's Office and the Maricopa County Attorney's Office. This Contract shall also govern the County's use of Contractor's proprietary Software designated on the License Schedule incorporated herein as Exhibit E and F which was licensed to the county under a previous agreement. For purposes of this Contract, the term "Software" shall also include Support Releases and/or Versioned Releases as those terms are defined herein, or in an Exhibit hereto. This Contract shall supersede any previously executed license agreements for Software agreed to by and between the Contractor and the County.

1.0 **TERM:**

- 1.1 This Contract is for a term of five (5) years, beginning on the 1st day of October, 2009 ("Effective Date") and ending the 30th day of September, 2014.
- 1.2 This contract will automatically renew thereafter for one (1) year periods unless Contractor is notified of non-renewal in writing by County no later than sixty (60) days prior to the renewal date. Renewals will be invoiced at the then current rates for program(s) selected on Exhibit A. No more than four (4) renewal periods may be exercised.

2.0 **INVOICES AND PAYMENTS:**

- 2.1 Contractor may invoice County for all fees and charges shown on Exhibit A hereto immediately after the Effective Date. The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:
 - Company name, address and contact
 - County bill-to name and contact information
 - Contract Serial Number
 - County purchase order number
 - Invoice number and date
 - Payment terms
 - Date(s) of service
 - Contract Item number(s)
 - Description of services
 - Pricing per unit of service
 - Extended price
 - Total Amount Due
- 2.2 Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

- 2.3 Payment shall be made to the Respondent by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Respondent may fill-out an EFT Enrollment form located on the Maricopa County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).
- 2.4 EFT payments to the routing and account numbers designated by the Respondent will include the details on the specific invoices that the payment covers. The Respondent is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.
- 2.5 All payments shall be due thirty (30) days after receipt of the invoice by County. Without limiting any rights or obligations under the Agreement, the following steps will be taken if an invoice becomes past due. Contractor's accounts receivable and the County's accounts payable representatives shall use all reasonable efforts to facilitate immediate payment of the invoice. In the event Contractor does not receive a commitment for prompt payment, each party shall escalate the matter to Contractor's Customer Partner or designated financial officer and the contract Chief Procurement Officer for investigation and resolution. Notwithstanding anything to the contrary, the initial contact with the contract Chief Procurement Officer shall constitute "notice of default" pursuant to Section 6.8.4
- 2.6 The Contractor shall have all rights and remedies available for payment default and interest as set forth in the Arizona Revised Statutes 35-342 and 11-622.

3.0 TAX: (SERVICES)

All amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). The County shall reimburse Contractor and hold Contractor harmless for all sales, use, VAT, excise, property or other taxes or levies which Contractor is required to collect or remit to applicable tax authorities. This provision does not apply to Contractor's income or franchise taxes, or any taxes for which The County is exempt, provided The County has furnished Contractor with a valid tax exemption certificate.

4.0 TAX: (COMMODITIES)

Tax shall not be levied against labor. Sales/use tax will be determined and paid by County pursuant to Section 3.0.

5.0 TERMS & CONDITIONS:

5.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless County, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the gross negligent acts, willful misconduct of the Contractor relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless County, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, caused by any gross negligent acts and willful misconduct in the performance of this Contract including any person for whose gross negligence and willful misconduct Contractor may be legally liable.

Contractor shall have no liability under this Section 6.0 unless (a) County notifies Contractor in writing within a reasonable amount of time, but no later than 10 business days after County becomes aware of a claim or the possibility thereof; and (b) Contractor has sole control of the settlement, compromise, negotiation, and defense of any such action; and County cooperates, in good faith, in the defense of any such legal action. County may, at its own expense, employ its own counsel to represent its interests in connection with any such action for which indemnification by Contractor is required hereunder.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of County.

Should any Software provided to County hereunder become, or in Contractor's opinion is likely to become, the subject of a claim of infringement, Contractor may, at its option, (i) obtain the right for the County to continue using the Software; (ii) replace or modify the Software so it is no longer infringing or reduces the likelihood that it will be determined to be infringing; or (iii) if neither of the foregoing options is commercially reasonable, terminate the license for the Software. Upon such termination of the licenses and the County's return of Confidential Information pursuant to Section 11 herein, Contractor will refund to the County, as the County's sole remedy for such license termination, all fees paid by the County for the terminated license, less an amount equal to one-thirty-sixth (1/36th) of the fees for each month or any portion thereof which has elapsed since the Effective Date of such terminated license. This Section states the entire liability of the Contractor with respect to any claim of infringement brought hereunder.

No Liability. Contractor shall have no liability for any claim of infringement based on (i) Software which has been modified by parties other than Contractor; (ii) the County's use of the Software in conjunction with data where use with such data gave rise to the infringement claim; or (iii) the County's use of the Software with non-Contractor software or hardware, where use with such other software or hardware gave rise to the infringement claim.

5.2 INSURANCE REQUIREMENTS:

Contractor, at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance from a company or companies duly licensed by the State of Arizona and possessing a current A.M. Best, Inc. rating of B++6. In lieu of State of Arizona licensing, the stipulated insurance may be purchased from a company or companies, which are authorized to do business in the State of Arizona, provided that said insurance companies meet the approval of County. The form of any insurance policies and forms must be acceptable to County.

All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted. Failure to do so may, at the sole discretion of County, constitute a material breach of this Contract.

Contractor's insurance shall be primary insurance as respects County, and any insurance or self-insurance maintained by County shall not contribute to it.

Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect the County's right to coverage afforded under the insurance policies.

The insurance policies may provide coverage that contains deductibles or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to County under such policies. Contractor shall be solely responsible for the deductible and/or self-insured retention and County, at its option, may require Contractor to secure payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

County reserves the right to request and to receive, within 10 working days, certified copies of any or all of the herein required insurance policies and/or endorsements. County shall not be obligated, however, to review such policies and/or endorsements or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of County's right to insist on strict fulfillment of Contractor's obligations under this Contract.

The insurance policies required by this Contract, except Workers' Compensation, and Errors and Omissions, shall name County, its agents, representatives, officers, directors, officials and employees as Additional Insureds.

The policies required hereunder, except Workers' Compensation, and Errors and Omissions, shall contain a waiver of transfer of rights of recovery (subrogation) against County, its agents, representatives, officers, directors, officials and employees for any claims arising out of Contractor's work or service.

5.2.1 Commercial General Liability:

Commercial General Liability insurance and, if necessary, Commercial Umbrella insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products/Completed Operations Aggregate, and \$2,000,000 General Aggregate Limit. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage, and shall not contain any provision which would serve to limit third party action over claims. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

5.2.2 Automobile Liability:

Commercial/Business Automobile Liability insurance and, if necessary, Commercial Umbrella insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to any of the Contractor's owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work or services under this Contract.

5.2.3 Workers' Compensation:

Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services under this Contract; and Employer's Liability insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee, and \$500,000 disease policy limit.

Contractor waives all rights against County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the Workers' Compensation and Employer's Liability or commercial umbrella liability insurance obtained by Contractor pursuant to this Contract.

5.2.4 Certificates of Insurance.

5.2.4.1 Prior to commencing work or services under this Contract, Contractor shall have insurance in effect as required by the Contract in the form provided by the County, issued by Contractor's insurer(s), as evidence that policies providing the required coverage, conditions and limits required by this Contract are in full force and effect. Such certificates shall be made available to the County upon 48 hours notice. **BY SIGNING THE AGREEMENT PAGE THE CONTRACTOR AGREES TO THIS REQUIREMENT AND FAILURE TO MEET THIS REQUIREMENT WILL RESULT IN CANCELLATION OF CONTRACT.**

In the event any insurance policy (ies) required by this contract is (are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of Contractor's work or services and as evidenced by annual Certificates of Insurance.

If a policy does expire during the life of the Contract, a renewal certificate must be sent to County fifteen (15) days prior to the expiration date.

5.2.5 Cancellation and Expiration Notice.

Insurance required herein shall not be permitted to expire, be canceled, or materially changed without thirty (30) days prior written notice to the County.

5.3 WARRANTIES

5.3.1 The Contractor warrants that all services provided hereunder be performed in a professional and workmanlike manner. .

5.3.2 ANY AND ALL SOFTWARE MATERIALS, DOCUMENTATION, CONFIDENTIAL INFORMATION AND ANY OTHER MISCELLANEOUS TECHNOLOGY PROVIDED BY CONTRACTOR TO THE COUNTY ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS OTHERWISE STATED IN THIS EXHIBIT, CONTRACTOR MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

5.4 PROCUREMENT CARD ORDERING:

The County may determine to use a MasterCard Procurement Card, to place and/or make payment for orders under the Contract.

5.5 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For County:

Maricopa County Materials Management Department
Attn: Chief Procurement Officer
320 West Lincoln Street
Phoenix, Arizona 85003

For Contractor:

Versata, Inc.
Attn: Contracts Manager
6011 West Courtyard Drive
Austin, TX 78730

5.6 TERMINATION FOR CONVENIENCE:

The County reserves the right to terminate the Contract, in whole or in part at any time when doing so is in the best interests of the County without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the County. If the County exercises its right to terminate under this section 5.6 it will not be entitled to any refund for any Support and Enhancement Services fees paid hereunder by the County.

5.7 TERMINATION FOR DEFAULT:

5.7.1 In addition to the rights reserved in the Contract, the County may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any material term or condition of the Contract, to acquire and maintain all required insurance policies,

bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor, and the Contractor shall then have thirty (30) days to cure the default. For clarity, the parties agree that the Contract may only be terminated if Contractor fails to cure the default within thirty (30) days of receiving notice from the County.

5.7.2 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

5.7.3 The Contractor shall have the right to terminate this Contract and any license granted herein if the County fails to make any payments due hereunder within fifteen (15) days after Contractor delivers notice of default to the County or by giving prior written notice to the County if the County fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from the County's receipt of Contractor's notice to cure such non-performance of material obligation. Upon termination of this Agreement or any license hereunder, the County's rights to the affected Software, Contractor Confidential Information and other Materials (as defined herein) ("Contractor Property") shall cease. The County shall immediately stop using such Contractor Property and shall return such Contractor Property to Contractor, or destroy all copies thereof. In addition, the County shall provide Contractor with written certification signed by an officer of the County, that all copies of the Contractor Property have been returned or destroyed and that no copies have been retained by the County for any purpose whatsoever. Following termination, any use of the Contractor Property by the County shall be an infringement and/or misappropriation of Contractor's proprietary rights in the Contractor Property. Upon termination of this Agreement by the County, and subject to section 5.8.3 herein, Contractor shall have no further obligation or liability hereunder and all fees due under the Contract shall become due and payable to Contractor immediately upon such termination

5.8 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the County may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the County may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the County from any other party to the contract arising as the result of the Contract.

5.9 OFFSET FOR DAMAGES:

5.9.1 In addition to all other remedies at law or equity, the County may offset from any money due to the Contractor any amounts Contractor owes to the County for damages resulting from breach or deficiencies in performance under this contract.

5.10 ADDITIONS/DELETIONS OF SERVICE:

The County reserves the right to add and/or delete products and/or services provided under this Contract subject to written approval by Contractor in writing. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price upon receipt of a written confirmation from Contractor. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the County.

5.11 RELATIONSHIPS:

In the performance of the services described herein, the Contractor shall act solely as an independent contractor, and nothing herein or implied herein shall at any time be construed as to create the relationship of employer and employee, partnership, principal and agent, or joint venture between the County and the Contractor.

5.12 SUBCONTRACTING:

Contractor shall have the right to use third parties, including offshore entities who employ foreign nationals, as well as employees of Contractor's affiliates and subsidiaries, who may also be foreign nationals, in performance of its obligations hereunder provided that third parties are subject to confidentiality obligations similar to those between Contractor and the County. The Contractor shall remain obligated to County under the terms of this Contract for any such duties and for the work performed by its third person subcontractors and assignees.

5.13 AMENDMENTS:

All amendments to this Contract shall be in writing and approved/signed by both parties. Maricopa County Materials Management shall be responsible for approving all amendments for County.

5.14 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The County, County, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials that pertain to the transactions hereunder .

5.15 AUDIT DISALLOWANCES:

If at any time, County determines that a cost for which payment has been made is a disallowed cost, such as overpayment, County shall notify the Contractor in writing of the disallowance with sufficient evidence proving such disallowance. County shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

5.16 ALTERNATIVE DISPUTE RESOLUTION:

5.16.1 Any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

5.16.1.1 Render a decision;

5.16.1.2 Notify the parties that the exhibits are available for retrieval; and

5.16.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

- 5.16.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.
- 5.16.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.
- 5.17 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §41-4401 AND FEDERAL IMMIGRATION LAWS AND REGULATIONS:
- 5.17.1 By entering into the Contract, the Contractor warrants compliance with the Immigration and Nationality Act (INA using e-verify) and all other Federal immigration laws and regulations related to the immigration status of its employees. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the Immigration Reform and Control Act of 1986, as amended from time to time, for all employees performing work under the Contract and verify employee compliance using the E-verify system. I-9 forms are available for download at USCIS.GOV.
- 5.17.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 5.18 VERIFICATION REGARDING COMPLIANCE WITH ARIZONA REVISED STATUTES §§35-391.06 AND 35-393.06 BUSINESS RELATIONS WITH SUDAN AND IRAN:
- 5.18.1 By entering into the Contract, the Contractor certifies it does not have scrutinized business operations in Sudan or Iran. The contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the Procurement Officer upon request. These warranties shall remain in effect through the term of the Contract.
- 5.18.2 The County may request verification of compliance for any contractor or subcontractor performing work under the Contract. Should the County suspect or find that the Contractor or any of its subcontractors are not in compliance, the County may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.
- 5.19 AVAILABILITY OF FUNDS:
- 5.19.1 The provisions of this Contract relating to payment for services shall become effective when funds assigned for the purpose of compensating the Contractor as herein provided are actually available to County for disbursement. The Director shall be the sole judge and authority in determining the availability of funds under this Contract. County shall keep the Contractor fully informed as to the availability of funds.

5.19.2 If any action is taken by any state agency, Federal department or any other agency or instrumentality to suspend, decrease, or terminate its fiscal obligations under, or in connection with, this Contract, County may amend, suspend, decrease, or terminate its obligations under, or in connection with, this Contract. In the event of termination under this subsection, County shall be liable for payment only for services rendered prior to the effective date of the termination, provided that such services are performed in accordance with the provisions of this Contract. County shall give written notice of the effective date of any suspension, amendment, or termination under this Section, at least ten (10) days in advance.

5.20 CONTRACT COMPLIANCE MONITORING

County shall monitor the Contractor's compliance with, and performance under, the terms and conditions of this Contract. Both parties shall make available for inspection and/or copying, only those records and accounts relating to the work performed or the services provided under this Contract upon thirty (30) days written notice to the other party. Such records shall be deemed Confidential Information hereunder.

5.21 WAIVER

Acceptance by County of performance not in strict compliance with the terms hereof shall not be deemed to waive the requirement of strict compliance for all future performance obligations. All changes in performance obligations under this Contract must be in writing.

5.22 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

5.23 RIGHTS IN DATA:

5.24 Subject to the County's full payment for services hereunder, all materials and work product created or provided to County hereunder (collectively "Materials") shall be owned by Contractor. Contractor hereby grants to the County, at no additional charge, an internal, worldwide, nonexclusive, nontransferable license to such Materials to reproduce, distribute, perform, display (publicly or otherwise), and otherwise use and exploit the Materials solely in connection with the software product for which this Agreement applies ("Licensed Software"), which is separately licensed to the County by a written license agreement ("License Agreement") or a Licensed Release (as that term is defined in Exhibit B) provided to the County hereunder. In no event shall the County sublicense the Materials to any third party. **INTEGRATION:**

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

5.25 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States County Court for the County of Arizona, sitting in Phoenix, Arizona.

5.26 CONTRACTOR LICENSE REQUIREMENT:

5.26.1 The Respondent shall procure all permits, licenses and pay the charges and fees necessary and incidental to the lawful conduct of his business. The Respondent shall keep fully informed of existing and future Federal, State and Local laws, ordinances, and regulations which in any manner affect the fulfillment of a Contract and shall comply with the same.

- 5.26.2 Respondents furnishing finished products, materials or articles of merchandise that will require installation or attachment as part of the Contract, shall possess any licenses required. A Respondent is not relieved of its obligation to possess the required licenses by subcontracting of the labor portion of the Contract. Respondents are advised to contact the Arizona Registrar of Contractors, Chief of Licensing, at (602) 542-1502 to ascertain licensing requirements for a particular contract. Respondents shall identify which license(s), if any, the Registrar of Contractors requires for performance of the Contract.

5.27 CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

- 5.27.1 The undersigned (authorized official signing for the Contractor) certifies, on behalf of Contractor that to the best of his or her knowledge and belief, that the Contractor, defined as the primary participant in accordance with 45 CFR Part 76, and its principals:
- 5.27.1.1 are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;
 - 5.27.1.2 have not within 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - 5.27.1.3 are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and
 - 5.27.1.4 have not within a 3-year period preceding this Contract had one or more public transaction (Federal, State or local) terminated for cause of default.
- 5.27.2 Should the Contractor not be able to provide this certification, an explanation as to why should be attached to the Contract.
- 5.27.3 The Contractor agrees to include, without modification, this clause in all lower tier covered transactions (i.e. transactions with subcontractors) and in all solicitations for lower tier covered transactions related to this Contract.

5.28 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Exhibits, the terms of this Contract shall prevail, except the Exhibits shall prevail with respect to all aspects of County's use of the Software.

5.29 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

- 5.29.1 Exhibit A, Pricing
- 5.29.2 Exhibit B, Additional Terms and Conditions
- 5.29.3 Exhibit C, Support and Enhancement Services
- 5.29.4 Exhibit D, Contractor Travel Policy
- 5.29.5 Exhibit E, License Schedule #1
- 5.29.6 Exhibit F, License Schedule #2

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR



AUTHORIZED SIGNATURE

Andrew S. Price, Vice President
PRINTED NAME AND TITLE

6011 W. Courtyard Dr., Austin, TX 78730
ADDRESS

3/10/2010
DATE

MARICOPA COUNTY



CHAIRMAN, BOARD OF SUPERVISORS

MAR 23 2010
DATE

ATTESTED:



CLERK OF THE BOARD 091609

MAR 23 2010
DATE

APPROVED AS TO FORM:



LEGAL COUNSEL

DATE

March 21 2010

EXHIBIT A

PRICING

SERIAL 09045-SS

NIGP CODE: 20867

RESPONDENT NAME:

Versata, Inc

VENDOR NUMBER :

6011 West Courtyard Drive
Austin, Tx 78730

ADDRESS:

P.O. ADDRESS:

TELEPHONE NUMBER:

+1.512.377.9700

FACSIMILY NUMBER:

512-233-0964

WEB SITE:

www.versata.com

REPRESENTATIVE:

Chris Ney, CEO

REPRESENTATIVE E-MAIL:

Chris.Ney@versata.com

YES NO REBATE

WILL ALLOW OTHER GOVERNMENTAL ENTITIES TO PURCHASE FROM THIS CONTRACT:

☐ ☒

WILL ACCEPT PROCUREMENT CARD FOR PAYMENT:

☒ ☐

WILL OFFER REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD:

☐ ☒ %

(Payment shall be made within 48 hours of utilizing the Purchasing Card)

PAYMENT TERMS: RESPONDENT IS REQUIRED TO PICK ONE OF THE FOLLOWING.

FAILURE TO CHOOSE PAYMENT TERMS WILL RESULT IN A DEFAULT TO NET 30 DAYS.

☐ NET 10 DAYS

☐ NET 45 DAYS

☐ 1% 10 DAYS NET 30 DAYS

☐ NET 15 DAYS

☐ NET 60 DAYS

☐ 2% 30 DAYS NET 31 DAYS

☐ NET 20 DAYS

☐ NET 90 DAYS

☐ 1% 30 DAYS NET 31 DAYS

☒ NET 30 DAYS

☐ 2% 10 DAYS NET 30 DAYS

☐ 5% 30 DAYS NET 31 DAYS

Maricopa County Sheriff's Office (MCSO)

Support and Enhancement Schedule A—for Maricopa County Sherriff's Office

Item No.	DESCRIPTION	Support and Enhancement Fee	
1	Versata Support and Enhancement Services for the period 10/1/2009 through 9/30/2010 (Year 1 of the Initial Support and Enhancement Period).	\$23,543.52	
2	Versata Support and Enhancement Services for the period 10/1/2010 through 9/30/2011 (Year 2 of the Initial Support and Enhancement Period).	\$24,485.26	
3	Versata Support and Enhancement Services for the period 10/1/2011 through 9/30/2012 (Year 3 of the Initial Support and Enhancement Period).	\$25,464.67	
4	Versata Support and Enhancement Services for the period 10/1/2012 through 9/30/2013 (Year 4 of the Initial Support and Enhancement Period).	\$26,483.26	
5	Versata Support and Enhancement Services for the period 10/1/2013 through 9/30/2014 (Year 5 of the Initial Support and Enhancement Period).	\$27,542.59	
	Currency is United States Dollar		
SUBTOTAL		\$127,519.30	
Taxes		\$0.00	
Total Fee		\$127,519.30	

Support and Enhancement Schedule A—for Maricopa County Attorney's Office

Item No.	DESCRIPTION	Support and Enhancement Fee	
1	Versata Support and Enhancement Services for the period 1/1/2010 through 9/30/2010 (Year 1 of the Initial Support and Enhancement Period). (fee prorated for 9 month renewal - co-terminate with Sheriff's Office)	\$66,410.32	
2	Versata Support and Enhancement Services for the period 10/1/2010 through 9/30/2011 (Year 2 of the Initial Support and Enhancement Period).	\$92,088.98	
3	Versata Support and Enhancement Services for the period 10/1/2011 through 9/30/2012 (Year 3 of the Initial Support and Enhancement Period).	\$95,772.54	
4	Versata Support and Enhancement Services for the period 10/1/2012 through 9/30/2013 (Year 4 of the Initial Support and Enhancement Period).	\$99,063.44	
5	Versata Support and Enhancement Services for the period 10/1/2013 through 9/30/2014 (Year 5 of the Initial Support and Enhancement Period).	\$103,587.58	
	Currency is United States Dollar		
	SUBTOTAL	\$456,922.96	
	Taxes	\$0.00	
	Total Fee	\$456,922.96	

EXHIBIT B

Additional Terms and Conditions

1.0 License Grant. Any Software provided to the county pursuant to this Contract shall be licensed to County on the following terms: each such license shall be a perpetual, worldwide, nonexclusive and nontransferable license to use only the object code version of the Software, solely to perform those functions defined in the user documentation that Contractor makes generally available in hard copy or electronic form to its general customer base in conjunction with the licensing of such Software (“Documentation”) and subject to all limitations and restrictions contained herein (“Use”). Web access for permitted third parties’ Use shall be defined in the applicable License Schedule if such access is to be permitted under this Agreement.

2.0 License Type. The type of license granted shall be a CPU License. A CPU License is a license to Use the Software on one CPU or Central Processing Unit. The number of CPUs on a particular machine shall be equal to the number of processors or cores on that machine. The number of CPU Licenses granted to the County hereunder are designated on the License Schedule.

3.0 Use. Individuals authorized to Use the Software (“Authorized Users”) may Use the Software solely to support the County’s own internal operations, in the operating software environment specified on the applicable License Schedule (the “Platform”). and only for the Software licensed herein. Individuals who access the Software, directly or indirectly, whether via an Contractor provided interface or otherwise, and/or cause the Software to perform any functions must be Authorized Users. Authorized Users shall not (i) access the Software to process, or permit to be processed, the data of any other party; or (ii) access the Software for service bureau or commercial time-sharing use. If the Software licensed under a License Schedule is to be installed on a computer connected to the World Wide Web, as authorized in the applicable License Schedule, the County shall not allow any web site, that is not fully owned by the County, to frame, syndicate, distribute, replicate, or copy any portion of the County’s web site that provides direct or indirect access to the Software. Unless otherwise expressly permitted in the License Schedule and subject to Section 4.0 below, the County shall not permit any subsidiaries, affiliated entities, or third parties to access the Software.

4.0 Authorized Users. Authorized Users shall only consist of (i) employees of the County and (ii) subject to Section 16, “Confidentiality”, third party contractors of the County who do not compete with Contractor (“Permitted Contractors”). Permitted Contractors may Use the Software only at the County’s place of business or in the presence of the County personnel.

5.0 Additional Restrictions. In no event shall the County disassemble, decompile, or reverse engineer the Software or Confidential Information (as defined in Section 16) or permit others to do so. Disassembling, decompiling, and reverse engineering include, without limitation: (i) converting the Software from a machine-readable form into a human-readable form; (ii) disassembling or decompiling the Software by using any means or methods to translate machine-dependent or machine-independent object code into the original human-readable source code or any approximation thereof; (iii) examining the machine-readable object code that controls the Software’s operation and creating the original source code or any approximation thereof by, for example, studying the Software’s behavior in response to a variety of inputs; or (iv) performing any other activity related to the Software that could be construed to be reverse engineering, disassembling, or decompiling. To the extent any such activity may be permitted pursuant to written agreement, the results thereof shall be deemed Confidential Information subject to the requirements of this Agreement. The County may use Contractor’s Confidential Information solely in connection with the Software and pursuant to the terms of this Contract.

6.0 Delivery. Contractor shall deliver to the County one master copy of the Software (each a “Master Copy”) solely for the purpose of allowing The County to make one copy of the Master Copy for each CPU License granted hereunder. The County’s right to reproduce the Master Copy shall be limited to the Authorized Reproduction Location, defined as the address for the County on page of this Agreement. The County shall assume all responsibility for the quality of the copies made by the County. For purposes of this Agreement, delivery shall be deemed complete when Contractor physically delivers, or causes a third party to deliver, a Master Copy to the County, or makes the Master Copy available to the County for downloading from Contractor’s File Transfer Protocol (“FTP”) site and has provided the County with the appropriate authorization to access the FTP site.

7.0 Archival and Backup Copies. Subject to the restrictions set forth herein, the County may make a reasonable

number of copies of the Master Copy solely for archival purposes and backup use in accordance with the County's standard backup processes in emergency situations.

8.0 **Marking.** The County shall include all copyright notices, proprietary legends, any trademark and service mark attributions, any patent markings, and other indicia of ownership and confidential markings on all copies of the Software and any other Contractor materials provided to the County, in the content and format contained on the Master Copy and such Contractor materials. The County shall pay all duplication and distribution costs incurred by the County in making copies of the Software, and shall also pay all custom duties and fees if applicable. Subject only to the license granted herein, all copies of the Software and any other Contractor materials provided to the County are the property of Contractor or its third party licensors from whom Contractor has obtained marketing rights (the "Third Party Licensors").

9.0 **Support and Enhancement.** For the periods listed in Schedules A the County hereby agrees to pay for, and Contractor hereby agrees to provide, Support and Enhancement Services as described in Exhibit C for the Licensed Software.

9.1 **Exclusions.** Contractor shall have no obligation to provide Support and Enhancement Services for: (i) Software that has been modified; (ii) Materials; (iii) any Support Releases of the Software no longer generally supported by Contractor; or (iii) any other software other than the generally available Software listed on a License Schedule and delivered to Customer pursuant to this Contract (collectively the "Unsupported Code"). Any Contractor support services related to Unsupported Code shall be subject to additional fees and would require execution of a mutually agreed upon Statement of Work detailing the terms of such work.

10.0 **Reservation of Rights.** By signing this Agreement, the County irrevocably acknowledges that, subject to the licenses granted herein, the County has no ownership interest in the Software, Materials, or Contractor Confidential Information provided to the County. Contractor shall own all right, title, and interest in such Software, Deliverables, or Contractor Confidential Information, subject to any limitations associated with intellectual property rights of third parties. Contractor reserves all rights not specifically granted herein.

11.0 **Confidentiality.** All information which is defined as Confidential Information hereunder in tangible form shall be marked as "Confidential" or the like or, if intangible (e.g. visually or orally disclosed), shall be designated as being confidential at the time of disclosure and shall be confirmed as such in writing within thirty (30) days of the initial disclosure.

11.1 **Definition.** "Confidential Information" may include all technical, product, business, financial, and other information regarding the business and software programs of either party, its customers, employees, investors, contractors, vendors and suppliers, including but not limited to programming techniques and methods, research and development, computer programs, documentation, marketing plans, customer identity, and business methods. Without limiting the generality of the foregoing, Confidential Information shall include all information and materials disclosed orally or in any other form, regarding Contractor's software products or software product development, including, but not limited to, the configuration techniques, data classification techniques, user interface, applications programming interfaces, data modeling and management techniques, data structures, and other information of or relating to Contractor's software products or derived from testing or other use thereof. Confidential Information includes all such Confidential Information that may have been disclosed by either party to the other party, before or after the Master Agreement Effective Date. Confidential Information includes information generally not publicly known, whether tangible or intangible and in whatever form or medium provided, as well as any information generated by a party that contains, reflects, or is derived from such information. For the purpose of this entire Section 8, 'Contractor' shall include all its Affiliates. "Affiliate" under this Agreement shall mean any entity, directly or indirectly, controlled by or under common control with or controlling a party to this Agreement.

11.2 **Confidentiality of Software.** The following is deemed Contractor Confidential Information with or without marking or written confirmation: (i) the Software, Documentation, Materials (ii) the oral

and visual information relating to the Software and provided in Contractor's training classes; and (iii) Contractor's representation methods of modeled data. In no event shall County disassemble, decompile, or reverse engineer the Licensed Software, a Licensed Release, or Confidential Information (as that term is defined herein) or permit others to do so. The Contractor reserves all rights not specifically granted to County herein.

- 11.3 Exceptions. Without granting any right or license, the obligations of the parties hereunder shall not apply to any material or information that: (i) is or becomes a part of the public domain through no act or omission by the receiving party; (ii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; (iii) is rightfully obtained from a third party without any obligation of confidentiality to the receiving party; or (iv) is already known by the receiving party without any obligation of confidentiality prior to obtaining the Confidential Information from the disclosing party. In addition, neither party shall be liable for disclosure of Confidential Information if made in response to a valid order of a court or authorized agency of government, provided that notice is promptly given to the party whose Confidential Information is to be disclosed so that such party may seek a protective order and engage in other efforts to minimize the required disclosure. The parties shall cooperate fully in seeking such protective order and in engaging in such other efforts.
- 11.4 Ownership of Confidential Information. Nothing in this Contract shall be construed to convey any title or ownership rights to the Software or other Contractor Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the Contractor Confidential Information to the County. Nothing in this Contract shall be construed to convey any title or ownership rights to the County's Confidential Information or to any patent, copyright, trademark, or trade secret embodied therein, or to grant any other right, title, or ownership interest in the the County Confidential Information to Contractor. Neither party shall, in whole or in part, sell, lease, license, assign, transfer, or disclose the Confidential Information to any third party and shall not copy, reproduce or distribute the Confidential Information except as expressly permitted in this Contract. Each party shall take every reasonable precaution, but no less than those precautions used to protect its own Confidential Information, to prevent the theft, disclosure, and the unauthorized copying, reproduction or distribution of the Confidential Information.
- 11.5 Non-Disclosure. Each party agrees at all times to use all reasonable efforts, but in any case no less than the efforts that each party uses in the protection of its own Confidential Information of like value to protect Confidential Information belonging to the other party. Each party agrees to restrict access to the other party's Confidential Information only to those employees, who (i) require access in the course of their assigned duties and responsibilities, and (ii) have agreed in writing to be bound by provisions no less restrictive than those set forth in this Section 8. Notwithstanding anything contained hereunder and subject to the Confidentiality obligations set forth under this Section 8, all references to Contractor or its employees under this Section 8 shall be deemed to include such employees of Affiliates and Subcontractors and Contractor will ensure that its Subcontractors abide by the applicable terms of the Agreement.
- 11.6 Injunctive Relief. Each party acknowledges that any unauthorized disclosure or use of the Confidential Information would cause the other party imminent irreparable injury and that such party shall be entitled to, in addition to any other remedies available at law or in equity, temporary, preliminary, and permanent injunctive relief in the event the other party does not fulfill its obligations under Section 16.

12.0 Suggestions/Improvements to Software. Notwithstanding anything to the contrary in any document exchanged between the parties, all suggestions, solutions, improvements, corrections, and other contributions provided by the County regarding the Software, Materials, Documentation or Contractor Confidential Information shall be owned by Contractor, and the County hereby agrees to assign any such rights to Contractor. Nothing in this Contract shall preclude Contractor from using in any manner or for any purpose it deems necessary, the know-how, techniques, or procedures acquired or used by Contractor in the performance of services hereunder.

13.0 Return of Confidential Information. Upon the written request of disclosing party, receiving party shall return or destroy (and certify such destruction in a signed writing) all Confidential Information of disclosing party, including all copies thereof and materials incorporating such Confidential Information, whether in physical or electronic form. Each party may retain a copy of the other party's Confidential Information solely for archival purposes. To the extent that it is impracticable to return or destroy any Confidential Information, and with respect to any copies retained for archival purposes, receiving party shall continue to maintain the Confidential Information in accordance with this Contract. The confidentiality obligations set forth in this Contract shall survive the termination of this Contract and remain in full force and effect until such Confidential Information, through no act or omission of receiving party, ceases to be Confidential Information as defined hereunder.

14.0 Liability Cap. WITH THE EXCEPTION OF CONTRACTOR'S INDEMNIFICATION OBLIGATION IN NO EVENT SHALL CONTRACTOR, CONTRACTOR'S THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY THE COUNTY FOR THE SOFTWARE, SERVICES, COURSES, COURSE MATERIALS, OR WORK WHICH GAVE RISE TO SUCH DAMAGES DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF SUCH CLAIM AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

15.0 Disclaimer of Damages. WITH THE EXCEPTION OF CONTRACTOR'S INDEMNIFICATION OBLIGATIONS HEREUNDER, IN NO EVENT SHALL CONTRACTOR, CONTRACTOR'S THIRD PARTY LICENSORS OR SUBCONTRACTORS BE LIABLE UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL ARISING HEREUNDER EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

16.0 Survival. The following provisions shall survive termination of this Contract:

17.0 Force Majure. Contractor shall not be liable to County for any delay or failure of Contractor to perform its obligations hereunder if such delay or failure arises from any cause or causes beyond the reasonable control of Contractor. Such causes shall include, but are not limited to, acts of God, floods, fires, loss of electricity or other utilities, or delays by County in providing required resources or support or performing any other requirements hereunder.

EXHIBIT C

Support and Enhancement Services

1. Support and Enhancement Services

This Support and Enhancement Services Exhibit sets forth the terms and conditions pursuant to which Contractor shall provide the County with certain support and enhancement services ("Support and Enhancement Services").

2. Definitions

- 2.1 **Support Release.** A "Support Release" of the Licensed Software shall mean any Update Releases and Versioned Releases that are made generally available to Contractor's general client base as an Update Release or Versioned Release in Contractor's sole discretion.
- 2.2 **Update Release.** An "Update Release" shall mean bug fixes and patches intended to correct Errors. Update Releases are denoted by a change to the numbers to the right of the second decimal point (e.g., v1.1.1 to v1.1.2).
- 2.3 **Versioned Release.** "Versioned Release" shall mean releases containing minor enhancements. Versioned Releases are denoted by a change to the number to the right of the decimal point (e.g. v1.1 to v1.2).
- 2.4 **New Product Release.** A "New Product Release" shall mean any release of the software that is not a Support Release.
- 2.5 **Errors.** "Errors" are reported problems that (i) prevent the Licensed Software from conforming in material respects to applicable Documentation, and (ii) are replicated and diagnosed by Contractor as defects in the Licensed Software.

3. Delivery of Enhancements

- 3.1 **Support Releases.** Contractor shall provide the County with Support Releases of the Licensed Software as set forth below.
- 3.2 **Delivery.** Contractor shall notify the County of all Support Releases of the Licensed Software upon such Support Release being made generally available to Contractor's general the County base. Delivery to the County of the Support Release shall be made upon request of the the County pursuant to Section 3 of the Agreement.
- 3.3 **New Product Releases.** New Product Releases will NOT be provided to the County pursuant to Support and Enhancement Services. Such New Product Releases would be subject to mutual negotiation and execution of a separate License Schedule and payment of an additional license fee for such New Product Releases.
- 3.4 **Other Releases.** It is Contractor's practice not to develop Versioned Releases marked by a change to the number to the left of the decimal point (e.g. v1.8 to v2.0). However, if Contractor's practice in this regard changes during the term of the applicable License Schedule, the County shall receive such Versioned Release pursuant to the terms of this Exhibit. In any event, any release that introduces functional, technical, or architectural shifts will be considered a New Product Release and will be subject to a separate license arrangement.

4. Support

- 4.1 **Error Corrections.** Contractor shall use commercially reasonable efforts to provide solutions, changes and corrections to the Licensed Software as are required to correct Errors.
- 4.2 **Support Obligations of the Parties.** Contractor shall provide Level 2 Support as set forth below. The County shall be responsible for those Level 1 Support activities described below.
- 4.3 **Level 1 Support.** "Level 1 Support" shall mean that the County shall provide all assistance reasonably requested by Contractor. Assistance required by Contractor from the County in replicating and diagnosing Errors includes, but is not limited to the following:
 - i) serving as the primary contact for questions by the Authorized Users and gathering information and descriptions of any problem so as to ascertain its severity;
 - ii) providing available resolution to issues if known;

- iii) analyzing problem symptoms and gathering additional data from Authorized Users as required;
- iv) recreating problems on a the County test system and reporting the result to Contractor if such tests indicate an Error in the Licensed Software;
- v) determining if a suspected error is due to (1) improper installation of the Licensed Software by the Authorized User or (2) prerequisite or operationally related equipment or software at the location of the Licensed Software;
- vi) attempting a bypass or circumvention of the suspected Error; and
- vii) if after performing all such Level 1 support functions, the County finds that the suspected Error appears to be in the Licensed Software, notifying Contractor pursuant to Section 4.6 below and providing a description of the problem and all supporting documentation and materials necessary to replicate the Error in the Licensed Software in Contractor's development environment.

4.3 Level 2 Support Representatives. The County shall identify exactly two (2) Authorized Users who will correspond with Contractor's support personnel as provided hereunder (the "Level 2 Support Representatives"). The County agrees to provide Contractor with the names, locations, telephone numbers and email addresses of the Level 2 Support Representatives within two (2) weeks from the applicable License Schedule Effective Date. The County may change Level 2 Support Representatives by providing Contractor with notice either in writing or by email to Contractor's support personnel at support@Versata.com.

4.5 Level 2 Support. "Level 2 Support" shall mean reasonable telephone and email support in the form of advice and counsel in support of Level 1 Support activities as well as Error corrections, all of which shall be performed pursuant to following:

- (i) Level 2 Support shall be provided to the Level 2 Support Representatives only;
- (ii) Level 2 Support shall be provided Monday through Friday from 7:00 AM to 7:00 PM (Central Time), exclusive of those holidays observed by Contractor. The holidays observed by Contractor are as follows: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve and Christmas Day. The County shall not be limited in the number of incidents reported to Contractor; and
- (iii) In the event that the County fails to provide Level 1 Support and Contractor is required to provide such Level 1 Support, the County shall pay Contractor on a time and materials basis, at Contractor's then-current rates, for Level 1 Support and Contractor shall not be bound by the Response Schedule below.

4.6 Contacting Contractor Support. Subject to the County's Level 1 Support obligations, the Level 2 Support Representative shall report Errors to Contractor via the following contacts:

- (i) Contractor's general level support engineers via Contractor's toll free support phone number at 1-877-6TRILGY (1-877-687-4549) or email at support@Versata.com.
- (ii) Contractor's world wide web support site at <http://www.Versata.com> where the County may access and obtain Contractor's knowledge databases, frequently asked questions ("FAQs"), patch downloads, technical tips and release notes.
- (iii) For Severity 1 and/or Severity 2 Errors (as defined below), the Level 2 Support Representative shall, in addition to any notification by any other means, notify Contractor by telephoning a support specialist. In the event the Level 2 Support Representative cannot make contact with an Contractor support specialist, the Level 2 Support Representative shall continue their efforts to personally notify Contractor by calling the following Contractor representatives in the order listed until an Contractor Representative is contacted in person:
 - a. Customer Partner
 - b. General Counsel or Associate General Counsel
 - c. General Manager

5. Error Classification

5.1 Severity One Errors. Errors that meet the following criteria:

- ◆ Errors that prevent all useful work from being done;

- ◆ material Errors in essential functions for which no non-manual work around exists; or
- ◆ Errors that cause a material loss of data.

5.2 **Severity Two Errors.** Errors that meet the following criteria:

- ◆ Errors that disable essential functions but for which a non-manual work around exists;
- ◆ Errors that block systems test or deliverables; or
- ◆ Errors that violate material specifications in the Documentation.

5.3 **Classification Dispute Resolution.** The parties shall mutually agree to a classification based on the description of the Error. In the event there is a dispute between the Level 2 Support Representative and Contractor regarding the classification of an Error that is not resolved within 24 hours after the report from the Level 2 Support Representative, such dispute shall be referred to Contractor's project manager and the County's project manager for resolution. In the event such personnel cannot resolve the dispute within 24 hours from the referral of the dispute to them, the issue shall be escalated to the the County's Vice President and Contractor's Customer Partner. In the event the Vice President and The County Partner cannot resolve the dispute within 24 hours, the dispute will ultimately be resolved by The County's Senior Vice President and Contractor's General Manager.

6. **Response Times**

6.1 **Response Schedule.** Contractor's support specialist shall use commercially reasonable efforts to respond to Severity 1 and Severity 2 Errors in accordance with the following Response Schedule. Such response times shall be measured from the time the Level 2 Support Representative contacts Contractor support pursuant to Section 4.6.

Response Schedule

	1 st Stage	2 nd Stage
Severity 1	4 business hours 1 business day	
Severity 2	8 business hours	3 business days

Stage Identification

Stage 1 - acknowledgment of receipt of Error report and all Level 1 support data.

Stage 2 - subject to the County's completion of its obligations herein, commencement of work on identifying and diagnosing the problem, and subsequent work around, temporary fix, or other temporary resolution of the Error and documentation of corrections.

EXHIBIT D

CONTRACTOR TRAVEL POLICY

Purpose

This policy is established in order to maintain a uniform definition of allowable and allocable costs acceptable to Maricopa County / Special Countys (hereinafter "the County"). It is recognized that there will be times when it is necessary for contractors to travel to the County in order to perform services under a contract. Use of this policy should insure the County does not become liable for unwarranted or excessive travel expense invoices from contractors.

- A. All contract-related travel shall be prior-approved by the County.
- B. Travel, lodging, and per diem expenses incurred in performance of County contracts shall be reimbursed based on current U.S. General Services Administration (GSA) domestic per diem rates for Phoenix, Arizona. Contractors must access the following internet site to determine rates:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC
- C. Commercial air travel shall be scheduled at the lowest available and/or most direct flight airfare rate at the time of any approved contract-related travel. A fare other than the lowest rate may be used only when seats are not available at the lowest fare or air travel at a higher rate will result in an overall cost savings to the County. Business class airfare is allowed only when there is no lower fare available to meet County needs.
- D. Rental vehicles may only be used if such use would result in an overall reduction in the total cost of the trip, not for the personal convenience of the traveler.
 - 1. Purchase of comprehensive and collision liability insurance shall be at the expense of the contractor. The County will not reimburse the contractor if the contractor chooses to purchase these coverages.
 - 2. Rental vehicles are restricted to sub-compact, compact, or mid-size sedans unless a larger vehicle is necessary for cost efficiency due to the number of travelers. (NOTE: contractors shall obtain written approval from the County prior to rental of a larger vehicle.)
 - 3. The County will reimburse the contractor for parking expenses if free, public parking is not available within a reasonable distance of the place of County business.
 - 4. The County will reimburse for the lowest rate, long-term uncovered (*e.g.* covered or enclosed parking will not be reimbursed) airport parking only if it is less expensive than shuttle service to and from the airport.
- E. The contractor is responsible for any other miscellaneous personal expenses, as they are included in the contractor's lodging and *per diem* expenses.
- F. The County will reimburse any allowable and allocable business expense, excluding health club fees and business class air fares, except as indicated in paragraph "C" above.
- G. Travel and per diem expenses shall be capped at 15% of project price unless otherwise specified in individual contracts.

EXHIBIT E

LICENSE SCHEDULE # 1

License Schedule to Master License and Services Agreement. This License Schedule ("Schedule"), made effective September 16, 2009 ("Schedule Effective Date") supplements and amends the Sole Source Contract Serial 09045-SS (the "Agreement") by and between Versata, Inc., ("Contractor"), on behalf of the Maricopa County Sheriff's Office, having its registered offices at 6011 W. Courtyard Dr., Suite 300, Austin, Texas 78730 and Maricopa County ("County"), with its principal place of business at 320 West Lincoln Street, Phoenix, AZ 85003 to license the Software specified herein and to incorporate the changes set forth below for the Software licensed herein. This Schedule, together with the Agreement, shall supersede any previously executed license agreements for such Software by and between the Contractor and the County.

County:

Maricopa County Sheriff's Office
MSCO Finance
100 West Washington
#1875
Phoenix , AZ 85003

Software	Quantity	License Type	Platform
Versata Logic Server	2	CPU License	WebSphere Edition
Versata Studio	8	CPU	Websphere Edition for AIX

- 1. SOFTWARE FEES.** The parties agree that the Software fees have been paid by the County and no additional fees for Software listed above are due hereunder, except that the Support and Enhancement Fees must be paid for the County to be entitled to any Support or Versioned Releases, as those terms are defined in Exhibits to the Agreement.

2. CONTRACT CONTACT FORCOUNTY:

Maricopa County Materials Management
Attn: Chief Procurement Officer
320 W. Lincoln St.
Phoenix, AZ 85003

EXHIBIT F

LICENSE SCHEDULE #2

This License Schedule ("Schedule"), made effective September 16, 2009 ("Schedule Effective Date") supplements and amends the Sole Source Contract Serial 09045-SS (the "Agreement") by and between Versata, Inc., ("Contractor") having its registered offices at 6011 W. Courtyard Dr., Suite 300, Austin, Texas 78730 and Maricopa County ("County"), on behalf of the Maricopa County Attorney's Office, with its principal place of business at 320 West Lincoln Street, Phoenix, AZ 85003 to license the Software specified herein and to incorporate the changes set forth below for the Software licensed herein. This Schedule, together with the Agreement, shall supersede any previously executed license agreements for such Software by and between the Contractor and the County.

County:

Maricopa County Attorney's Office
9th Floor – Administration Building
301 West Jefferson
#Suite 900
Phoenix , AZ 85003

Software	Quantity	License Type	Platform
Versata Logic Server	6	CPU License	WebSphere Edition
Versata Studio	9	CPU License	Websphere Edition for AIX
Versata Logic Server – Development & Test	2	CPU License	Websphere Edition for AIX
Versata Logic Server - Production	1	CPU License	Websphere Edition for AIX

- 1. SOFTWARE FEES.** The parties agree that the Software fees have been paid by the County and no additional fees for Software listed above are due hereunder, except that the Support and Enhancement Fees must be paid for the County to be entitled to any Support or Versioned Releases, as those terms are defined in Exhibits to the Agreement.
- 2. DEVELOPMENT AND PRODUCTION ENVIRONMENTS.** The designation "Development & Test" as used herein shall mean that the County may run the Software in question on the number of CPUs designated for the purpose of developing and testing applications. The designation "Production" as used herein shall mean that the Software may be run on the number of CPUs designated for any use specified in the Documentation other than development or testing of an application.

3. CONTRACT CONTACT FORCOUNTY:

Maricopa County Materials Management
Attn: Chief Procurement Officer
320 W. Lincoln St.
Phoenix, AZ 85003